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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/492,423	01/27/2000	Ilya Umansky	2705-90	9857

7590 04/11/2003

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EXAMINER

HSU, ALPUS

ART UNIT	PAPER NUMBER
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2665

DATE MAILED: 04/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/492,423

Applicant(s)

UMANSKY ET AL.

Examiner

Alpus H. Hsu

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> . | 6) <input type="checkbox"/> Other: |

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1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 27-32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 27-32 are directed to a computer software which does not fall into any category of statutory subject matter.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-32 are rejected under 35 U.S.C. 102(e) as being anticipated by THORNTON et al. in U.S. Patent No. 6,363,065 or HO in U.S. Patent No. 6,452,922 or WELLARD et al. in U.S. Patent No. 6,510,219.

By broadly interpreting the TDM switch (250) as the claimed cross connect device, THORNTON et al. discloses a method, apparatus and storage medium having computer program codes for cross connecting the incoming call to both the fallback call over a circuit switched network (20) and VoIP call over a VoIP network (30) based on continuously monitored quality of service of the VoIP network (see col. 4, line 44 to col. 5, line 28, col. 9, line 47 to col. 15, line 22) as in claims 1-32.

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Similarly, by broadly interpreting the switch within the IP interface (304) as the claimed cross connect device, HO also discloses a method, apparatus and storage medium having computer program codes for cross connecting the incoming call to both the fallback call over a circuit switched network (106) and VoIP call over a VoIP network (108) based on continuously monitored quality of service of the VoIP network (see col. 2, line 23 to col. 3, line 2) as in claims 1-32.

Furthermore, by broadly interpreting the switching matrix (100) as the claimed cross connect device, WELLARD et al. also discloses a method, apparatus and storage medium having computer program codes for cross connecting the incoming call to both the fallback call over a circuit switched network (PSTN) and VoIP call over a VoIP network (Unreliable Network) based on continuously monitored quality of service of the VoIP network (see col. 2, lines 9-42, col. 2, line 59 to col. 3, line 15, col. 3, line 26 to col. 5, line 25) as in claims 1-32.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Agraharam et al., Donak et al. and Scott et al. are cited to show the common feature of alternate call routing schemes using gateway/bridge and quality of service information similar to the claimed invention.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alpus H. Hsu whose telephone number is (703)305-4377. The examiner can normally be reached on M-F (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D. Vu can be reached on (703)308-6602. The fax phone numbers for the

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organization where this application or proceeding is assigned are (703)872-9314 for regular communications and (703)872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-4700.

AHH
April 8, 2003



Alpus H. Hsu
Primary Examiner
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